

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

DF & Company,
Appellant,

v.

Polk County Board of Review,
Appellee.

ORDER

Docket No. 13-77-0836
Parcel No. 312/00001-845-016

On August 4, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant DF & Company was represented by attorney Scott Long of Des Moines, Iowa. Robert Wentzel of Alliance Property Consultants, Inc., Eden Prairie, Minnesota is representative for DF & Company. Assistant County Attorney David Hibbard represented the Board of Review at hearing. Both parties submitted evidence and testimony in support of their positions. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

DF & Company, owner of residentially classified property located at 14051 Douglas Parkway, Urbandale, Iowa, appeals from the Polk County Board of Review decision regarding its 2013 property assessment. The 2013 assessed valuation was \$686,300, allocated to the land with no improvement value.

DF & Company (DF) protested to the Board of Review claiming the subject property was assessed for more than authorized by law and was not assessable, is exempt from taxes, or is misclassified under section 441.37(1)(a)(2) and (3). It claimed the property should be classified agricultural and valued at \$10,730. The Board of Review denied the protest.

DF then appealed to this Board reasserting its claims and seeking reclassification of the parcel as agricultural. We note that because agricultural property is valued differently than residential property, a classification change would necessitate a revaluation of the land, as well.

The subject site is 25.1 acres of unimproved realty at the northwest corner of 142nd Street and Douglas Parkway. The parcel was classified agricultural until 2013 when it was re-classified residential and re-valued.

James Ertz is Vice President of Real Estate Investments at DF, a real estate holding company. Ertz testified that DF acquired the subject parcel as a result of a foreclosure in 2012. DF entered into an agreement with an excavator in May 2012. Under the terms of the agreement, Seamus Excavating, LLC paid \$10,000 to remove approximately 20,000 yards of fill dirt that was stockpiled above-grade on the property, level the site, and reseed with grass by August 31, 2012. (Exhibit 1). Michael Sobotka, Manager of Seamus, authored an undated letter confirming the dirt removal and seeding of the site with agricultural grasses. Sobotka indicated the hay would be ready for cutting in the fall or early spring 2013. (Exhibit 2). We note that the agreement did not specify the type of grass to be planted. Ertz was uncertain when the soil was removed and whether hay was cut or baled in 2013.

DF entered into a cash-rent farm lease in May 2013 with Brett Boston of Adel, Iowa. (Exhibit 3). Under the terms of the farm lease, Boston paid \$10 per acre to farm 17 acres of the land from May 2013 to February 2014. The \$170 cash rent was payable at the end of November 2013.

Tammy Berenguel, Support Supervisor with the Polk County Assessor's Office, testified on behalf of the Board of Review. The sale to DF prompted Berenguel to inspect the property on July 16, 2012. She observed dirt being cleared from the property, grading, and a lot of machinery on site. The site had poor, sloped topography with mostly bare dirt, some grass, and big rocks. She did not observe any agricultural use of the property. Berenguel next visited the property in May 2013 and found bare ground, weeds, and no row crop. Nothing she saw indicated an intended profit from agricultural use.

Exhibit A includes nine photographs showing the property as it looked when she visited in 2013. The photographs corroborate Bergenguel's testimony.

Berenguel identified Exhibits 4A to 4E showing conditions on the property in August 2013; Exhibits 5A to 5C showing conditions on the property in October 2013; and Exhibits 6A – 6C showing conditions on the property in December 2013. She also made a site visit in July 2014. Berenguel testified about her observations on each date. While some agricultural planting was evident in 2013 and 2014, because these observations all occurred after the January 1, 2013 assessment date, we give them no consideration.

Berenguel testified about similar, surrounding properties that were classified agricultural. Unlike DF's property, these parcels were planted, mowed, harvested, and had stored hay bales in view when she inspected them. Berenguel testified that she had consulted with Steve Franklin, representative of the City of Urbandale, concerning zoning for this area. Franklin reported the subject is included in a designated Planned Urban Development (PUD) and zoned for retail and commercial. An application is pending for retail and office use in the southern portion of the parcel and for residential use in the northern portion of the parcel.

The evidence indicates the property was planted with grass seed in late summer of 2012; however, it is uncertain whether any cutting took place in the fall. It seems clear that, at most, minimal agricultural use for intended profit was undertaken on the parcel before the January 1, 2013, assessment date and the subject property did not meet the requirements of the agricultural classification rules as of that date.

Conclusions of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board

determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). However, if property is classified agricultural it is to be assessed and valued based on its productivity and net earning capacity. Iowa Code § 441.21(1)(e).

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code Ch. 701-71.1. (Exhibit D). Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* r. 701-71.1(2). "Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is 'agricultural' or [residential] is to be decided on the basis of its primary use." *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. Iowa Admin. r. 701-71.1(1).

By administrative rule, residential property

shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Building used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the

dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage shed for household goods. Residential real estate located on agricultural land shall include only buildings as defined in this subrule.

...

Iowa Admin. Code r. 701-71.1(5).

Conversely, agricultural property

shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.

...

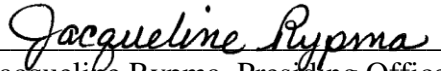
Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this subrule.

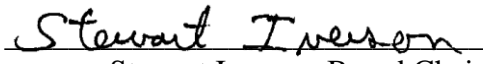
Iowa Admin. Code r. 701-71.1(3).

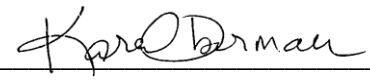
The Board of Review maintains the subject property does not meet the requirements of agricultural classification and we agree. While the use of the property may have changed after the assessment date, the evidence did not demonstrate it was used primarily for agricultural purposes with an intent to profit as of the January 1, 2013, assessment date and does not support the claim that the property is misclassified or over-assessed.

THE APPEAL BOARD ORDERS the January 1, 2013, assessment of DF & Company's property located in Urbandale, Iowa, is affirmed.

Dated this 9th day of September, 2014.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

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